



CITY OF HAYWARD AGENDA REPORT

AGENDA DATE
AGENDA ITEM
WORK SESSION ITEM

10/10/00
09/26/00
24

TO: Mayor and City Council

FROM: Director of Community and Economic Development

SUBJECT: Appeal of Planning Commission Decision to Revoke Use Permit No. 203 13 that Allows Used Automobile Sales and Minor Servicing of Automobiles – Al M. Casatico (Owner), Joseph Huber (Business Owner-Hayward Auto Wholesale) - The site is Located at 22301 Mission Boulevard, the southwest corner of Mission Boulevard and Grace Street, in a Central City Commercial (CC-C) Sub-District

RECOMMENDATION:

It is recommended that the City Council deny the appeal.

DISCUSSION:

In 1969, the Board of Adjustments approved Use Permit Application No. 203 13 for "*a used car sales lot using the vacant service station building for minor servicing of autos for sale or under warranty with no heavy repairing*" subject to conditions of approval (see Exhibit C, page C-17). At that time retail auto sales were permitted subject to approval off a conditional use permit. In August 1998, staff received a complaint regarding dismantled vehicles and vehicle parts being stored by Hayward Auto Wholesale, giving the appearance of an automobile wrecking yard. Inspections of the site revealed various violations of the use permit. In 1998, staff imposed additional conditions of approval on the use permit, aimed at remedying various Municipal Code violations revealed by the inspections. These new conditions of approval included the discontinuation of off-site storage of vehicles connected with the business on nearby lots and City streets. These conditions of approval were agreed to by the property owner and the business operator. After numerous documented unsuccessful attempts by Community Preservation staff to achieve compliance with the use permit and remedying miscellaneous Municipal Code violations, the matter was referred to the Planning Commission for revocation of the use permit.

On January 13 , 2000, the Planning Commission voted (4:2, 1 abstention) to revoke the use permit by January 31, 2000, if the business operation were not brought into compliance with the conditions of approval and the Municipal Code. The Municipal Code violations included needed maintenance of the site, the use of public streets in connection with the business, and storage of vehicles on an adjacent parcel (811 Grace Street). The Commission also requested that staff bring back the matter in six months for further review (see Planning Commission minutes of January 13, 2000, attached as Exhibit G). [Please note at the January hearing, neither the

[Planning Commission nor staff were aware that vehicles associated with Hayward Auto Wholesale were also being stored on nearby property owned by St. Vincent de Paul without benefit of a use permit.] By January 31, 2000, Hayward Auto Wholesale was believed to be in compliance with the conditions of approval and, therefore, a letter of compliance was sent February 15, 2000.

On March 30, 2000, another letter was sent reminding Mr. Huber, the owner of Hayward Auto Wholesale, and Mr. Casatico, the owner of the property, of the six-month Planning Commission review and citing several outstanding violations of the conditions of approval, including those imposed by staff in 1998 and by the Planning Commission on January 13, 2000. (See Exhibit C, p. C-32). Throughout the following months, staff and residents adjacent to the site observed several violations. These violations included vehicle repair being conducted outside the former service station building creating noise that disturbed adjacent residences and various Municipal Code violations cited by the Planning Commission and for which conditions were imposed. These violations involved business being conducted in the surrounding neighborhood and by using public streets for parking vehicles awaiting repair or purchase. During the hearing, the Planning Commission was informed of violations of the Municipal Code that involved police response.

On July 27, 2000, the Planning Commission voted to revoke Use Permit No. 20313 (5:0, 1 abstention, 1 absent). During the hearing, the Commission noted that Hayward Auto Wholesale had outgrown the property in terms of the area needed to conduct business resulting in several of the violations.

Since the Planning Commission's action on July 27, 2000, violations of the use permit have continued.

- On August 28, 2000, a City of Hayward Police officer arranged for the towing of a vehicle from the corner of Pearce and Grace Streets which was parked for more than 72 hours and belonged to Hayward Auto Wholesale. Mr. Huber stated that he was in the process of purchasing the vehicle (Exhibit D).
- Parked vehicles were used inappropriately at night for various illegal activities that further jeopardize neighborhood safety. On several occasions, the Police Department had observed people sleeping in vehicles located on the site. On August 4, 2000, during a security check of the property, transients were found sleeping in a truck and a van. The transients claimed they were given permission to sleep in the vehicles by Mr. Huber (Exhibit E).

Request for Appeal of the Planning Commission Decision

Attorneys representing the property owner and the business owner sent letters appealing the Planning Commission decision to revoke Use Permit No. 20313 (Exhibit F).

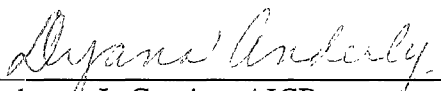
Mr. Lewis L. Vohland, attorney for the property operator, claims that the revocation is not justified because his client complies with the conditions of approval and the violations are off-site and not on his property. The conditions of approval required the removal of a roof sign, the installation of irrigated landscaping and construction of a 6-inch curb around parking areas and planters; these conditions have been met. However, major auto repair has been carried out whereas the use permit is for "minor auto servicing," auto repair continued outdoors although the use permit limits servicing to within the former service station structure, and Municipal Code requirements imposed by staff in 1998 and the Planning Commission in January 2000 as additional conditions of approval have not been met as the business was not confined to the site.

Mr. James P. Mootz, attorney for Mr. Huber, the business owner, alleges that City staff has engaged in a plan to force Hayward Auto Wholesales out of business by pressuring adjacent property owners to revoke Mr. Huber's use of their land for vehicle storage. He indicates that this constrains the ability of Mr. Huber to contain his business to the premises. Use permits are required to use the nearby land for parking lots and none exist, and one property owner was not aware that his lot was used on Saturdays by Hayward Auto Wholesale. In addition, the St. Vincent de Paul property anticipates clearing its land for development with residential cottages. Moreover, when Mr. Huber used nearby lots for vehicle storage, his business still extended to the public streets.

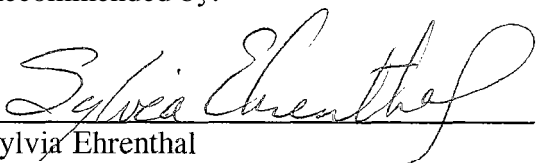
CONCLUSION

The Planning Commission revoked the use permit because Mr. Huber continued to violate the conditions of approval. In January 2000, the Planning Commission gave Mr. Huber and Mr. Casatico a second chance to operate the business and maintain the property free of violations. Staff recognized that violations continued after initial compliance and a letter of reminder was sent. However, violations did not cease and the Planning Commission felt that ample opportunity for compliance was given to both the property and business owner. Since the violations were not corrected, the Planning Commission revoked the use permit noting that the business has outgrown the property.

Prepared by:


Arlynn J. Camire, AICP
Associate Planner

Recommended by:


Sylvia Ehrenthal
Director of Community and Economic Development

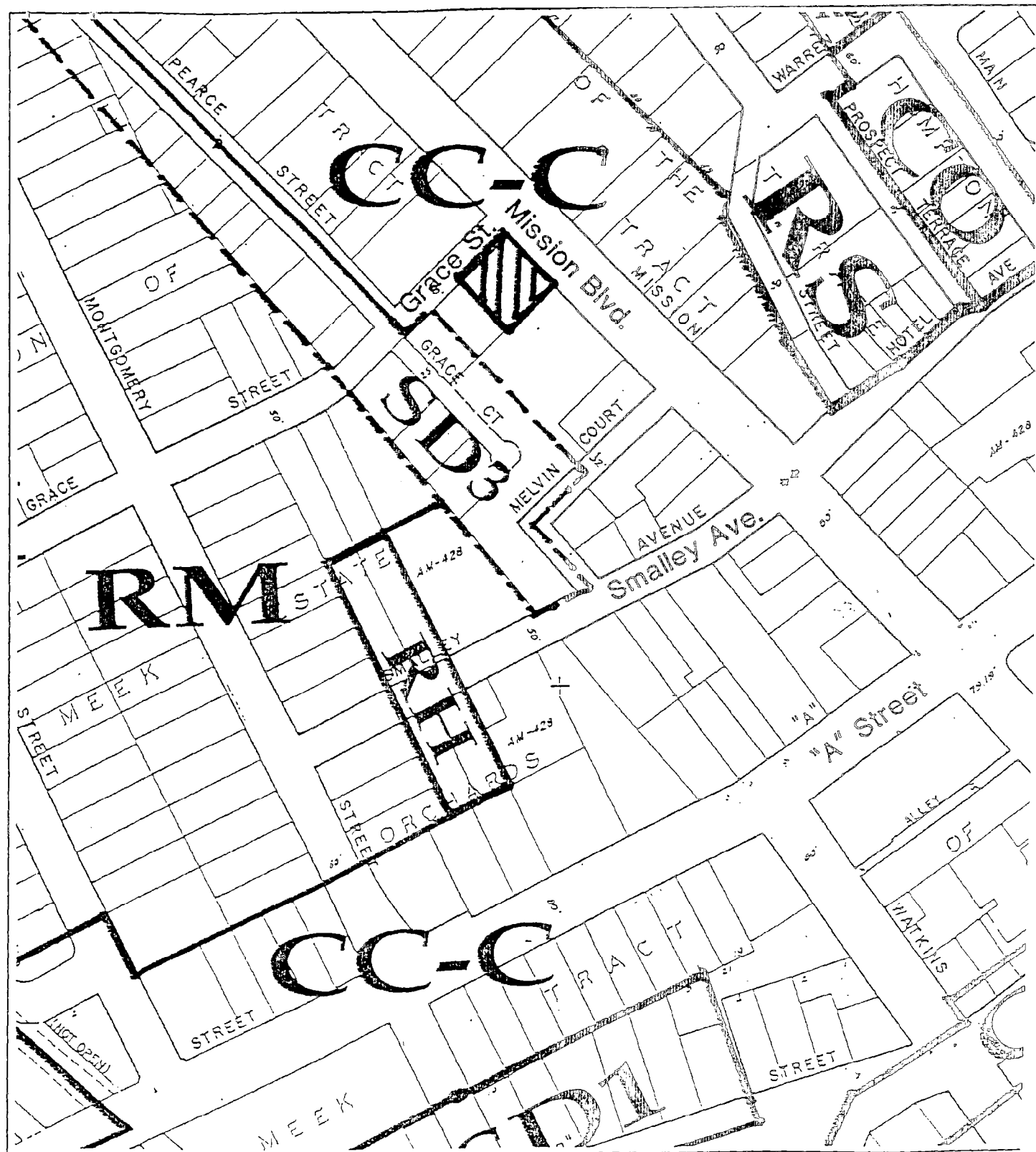
Approved by:



Jesús Armas, City Manager

Attachments:	Exhibit A	Area Map
	Exhibit B	Findings for Denial
	Exhibit C	Draft Planning Commission Minutes and Staff Report, dated July 27, 2000
	Exhibit D	Hayward Police Department Vehicle Report dated August 29, 2000
	Exhibit E	Hayward Police Department Incident Report dated August 4, 2000
	Exhibit F	Letters of Appeal, dated August 4 and August 7, 2000
	Exhibit G	Planning Commission Meeting Minutes, dated January 13, 2000
	Exhibit H	Conditions of Approval, dated June 17, 1969
		Draft Resolution

9.21.00



AREA MAP

Revocation of Use Permit No. 20313

Hayward Auto Wholesale

Al M. Casatico (Property Owner), Joseph Huber (Business Owner)

22301 Mission Boulevard

FINDINGS FOR REVOCATION

Use Permit No. 20313
22301 Mission Boulevard
Hayward Auto Wholesale (Applicant)
Al M. Casatico (Owner)

Based on the staff report and the public hearing record:

1. On June 6, 1969, the Board of Adjustments approved Use Permit Number 20313, subject to specified conditions, to allow used car sales and minor servicing of automobile for sale on property located at 22301 Mission Boulevard in Hayward, California ("the Property"), situated in a Central City Commercial (CC-C) subdistrict;
2. The property owner and business operator have conducted this use in a manner as to impair the character and integrity of the zoning district and surrounding area by conducting outdoor vehicle repairs on the property, storing vehicles on an adjacent parking lot located at 811 Grace Street continues contrary to an agreement with the property owner to remove the vehicles, and storing vehicles on a lot located at 22335 Mission Boulevard. City staff has attempted to work with the owners to address these problems for over twenty months. Nevertheless, violation of various Municipal Code requirements has continued. Although the operator and the property owner once complied, code violations have continued. Based on the extended history of non-compliance for the site, there is no reason to believe that compliance will occur. The manner in which the business is operated constitutes a detriment to the neighborhood and is clearly in violation of the uses approved by Use Permit No. 20313. Modification of the conditions or plan would not be in the public interest or would be detrimental to the public health, safety, or general welfare due to the denial of the City Council to allow outdoor vehicle repair, off-site storage of vehicles without the approval of a use permit and the repeated lack of compliance on the part of the business operator.
3. The property owner and business operator have not fully complied with various regulations of the Zoning Ordinance in that: (a) conducting outdoor vehicle repairs on the property, (b) storing vehicles on an adjacent parking lot located at 811 Grace Street continues contrary to an agreement with the property owner to remove the vehicles, (c) storing vehicles on a lot located at 22335 Mission Boulevard, (d) parking vehicles off-site that are awaiting repair or purchase, and (e) allowing illegal activities to continue on-site during non-business hours such as the use of vehicles for overnight sleeping quarters. These activities violate the terms of the use permit as originally imposed and subsequently modified by staff in 1998 and the Planning Commission in January 2000, and are detrimental to the public health, safety, or general welfare.

Violations of land use and parking regulations include:

Section 1 O-l. 150, Nuisance

Section 1 O-l. 175, Uses/Activities Conducted Indoors

Section 1 O-l, 180, Violation of Zoning Ordinance

Section 10-I. 1.522 CC-C, Permitted Uses

Section 10-1.523 b, CC-C, Conditional Uses

*Section I O-l. 2735, Special Standards and Conditions for Certain Uses (k) Vehicle Parking,
Repair, Display and Storage Requirements (3) Display and Sale of Motor Vehicles*

Section 10-12850 Violations and Penalties (a), (c) and (d)

Section 10-2.500 Parking Space Location

California Penal Code Section 647 (j)

4. After revocation of the use permit on January 13, 2000, the operator continued to violate the conditions of approval by permitting transients to sleep overnight in vehicles on the Pot and parking his vehicles on City streets in excess of 72 hours.
5. Pursuant to Hayward Municipal Code Section 10-1 .3260, Subdivision (c), for all off the above stated reasons, Use Permit Number 20313 is hereby revoked.

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9/20/00

HAYWARD CITY COUNCIL

RESOLUTION NO.

Introduced by Council Member _____

RESOLUTION DENYING APPEAL OF PLANNING
COMMISSION'S DECISION TO REVOKE USE PERMIT NO
20313 - AL M. CASATICO (OWNER), JOSEPH HUBER
(BUSINESS OWNER-HAYWARD AUTO WHOLESALE)

WHEREAS, Use Permit No. 20313 was approved by the Board of Adjustments in 1969 for a used car sales lot with minor servicing of automobiles for sale, subject to certain conditions of approval, at 22301 Mission Boulevard. In August, 1998, following a complaint by neighbors, City staff inspected the premises and discovered various violations of the use permit and Hayward Municipal Code regulations by then operator, Hayward Auto Wholesale. Additional conditions of approval aimed at remedying the Municipal Code violations were subsequently imposed for the use permit. Violations of the conditions of approval continued for another fifteen months. On January 13, 2000, the Planning Commission voted to revoke Use Permit No. 20313 if the property was not brought into compliance with all the conditions of approval and Municipal Code requirements by January 31, 2000, and requested City staff to bring the matter back for further review in six months; and

WHEREAS, Hayward Auto Wholesale temporarily complied with the conditions of approval and, on February 15, 2000, was sent a letter confirming compliance. Thereafter, Hayward Auto Wholesale immediately resumed noncompliance with the conditions of approval. On March 30, 2000, a letter was sent to Mr. Huber and Mr. Casatico reminding them of the six-month Planning Commission review and citing several outstanding violations of the conditions of approval, including violations of the Hayward Municipal Code. Furthermore, throughout the months following the March 30 letter, staff and residents adjacent to the site observed several violations of the conditions of approval, including outdoor auto repair, off-site vehicle storage, and parking on public streets; and

WHEREAS, at the July 27, 2000 meeting, the Planning Commission voted to revoke Use Permit No. 20313 based on continuing violations of the conditions of approval, which decision has been appealed by the property owner and the business owner; and

WHEREAS, in August, 2000, after the decision of the Planning Commission to revoke the use permit, Hayward Auto Wholesale continued to violate the conditions of approval by storing vehicles on City streets and permitting transients to use vehicles on its lot for overnight sleeping accommodations; and

WHEREAS, the City Council has reviewed and considered all material presented, including the record of the proceedings before the Planning Commission (which is on file in the office of the City Clerk); and

WHEREAS, the City Council hereby finds and determines that:

1. On June 6, 1969, the Board of Adjustments approved Use Permit No. 20313, subject to specified conditions, to allow used car sales and minor servicing of automobiles for sale on property located at 22301 Mission Boulevard in Hayward, California ("the Property"), situated in a Central City Commercial (CC-C) subdistrict.
2. The property owner and business operator have not fully complied with various conditions of approval, including regulations of the Zoning Ordinance in that: (a) conducting outdoor vehicle repairs on the property, (b) storing vehicles on an adjacent parking lot located at 811 Grace Street contrary to an agreement with the property owner to remove the vehicles, (c) storing vehicles on a lot located at 22335 Mission Boulevard, (d) parking vehicles off-site that are awaiting repair or purchase, and (e) allowing illegal activities to continue on-site during non-business hours such as the use of vehicles for overnight sleeping quarters. These activities violate the terms of the use permit as originally imposed and subsequently modified by staff in 1998 and the Planning Commission in January 2000, and are detrimental to the public health, safety, or general welfare.

Violations of land use and parking regulations include:

Section 10-1. 150	Nuisance
Section 10-1. 175	Used/Activities Conducted Indoors
Section 10-1. 180	Violation of Zoning Ordinance
Section 10-1. 1522	CC-C, Permitted Uses
Section 10-1.523 b.	CC-C, Conditional Uses
Section 10-1.2735	Special Standards and Conditions for Certain Uses (k) Vehicle Parking, Repair, Display and Storage Requirements (3) Display and Sale of Motor Vehicles
Section 10-12850	Violations and Penalties (a), (c) and (d)
Section 10-2.500	Parking Space Location
California Penal Code Section 647(j)	

3. The property owner and business operator have conducted this use in a manner as to impair the character and integrity of the zoning district and surrounding area by conducting outdoor vehicle repairs on the property, storing vehicles on an adjacent parking lot located at 811 Grace Street contrary to an agreement

with the property owner to remove the vehicles, and storing vehicles on a lot located at 22335 Mission Boulevard. City staff has attempted to work with the owners to address these problems for over twenty months. Nevertheless, violations of various conditions of approval have continued. Although the operator and the property owner once complied, violations have continued. Based on the extended history of non-compliance for the site, there is no reason to believe that compliance will occur or that the owner/operator would comply with newly-imposed conditions.

4. After revocation of the use permit on July 27, 2000, the operator continued to violate the conditions of approval by permitting transients to sleep overnight in vehicles on the lot and parking his vehicles on City streets in excess of 72 hours.
5. Pursuant to Hayward Municipal Code Section 10-1.3260, Subdivision (c), for all of the above-stated reasons, Use Permit No. 20313 is hereby revoked.

NOW THEREFORE BE IT RESOLVED, upon the basis off the aforementioned findings, the City Council hereby sustains the Planning Commission's revocation off Use Permit No. 20313 and rejects the appeal filed by Al M. Casatiko (Owner) and Joseph Huber (Business Owner - Hayward Auto Wholesale).

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2000

ADOPTED BY THE FOLLOWING VOTE:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST: _____
City Clerk of the City of Wayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

**DUE TO THE LENGTH OF REFERENCED
EXHIBITS, THEY ARE NOT AVAILABLE FOR
WEBSITE VIEWING. THE AGENDA REPORT IN
ITS ENTIRETY IS AVAILABLE FOR REVIEW IN
THE CITY CLERK'S OFFICE AND AT THE MAIN
LIBRARY .**